

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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In re the Matter of:

MARIA CASCARANO, *Petitioner/Appellee*,

*v.*

IGNACIO MENDOZA GUERRERO, *Respondent/Appellant*.

No. 1 CA-CV 20-0307 FC  
FILED 5-11-2021

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Appeal from the Superior Court in Maricopa County  
No. FN2015-000480, FC2015-070629  
(Consolidated)  
The Honorable Todd F. Lang, Judge

**AFFIRMED**

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COUNSEL

Frank L. Ross, Attorney at Law, Goodyear  
By Frank L. Ross  
*Counsel for Petitioner/Appellee*

Michael L. Gertell, LLC, Phoenix  
By Michael L. Gertell  
*Counsel for Respondent/Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Samuel A. Thumma and Judge Brian Y. Furuya joined.

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**C A T T A N I**, Judge:

¶1 Ignacio Guerrero appeals from the superior court judgment denying his petition to enforce the equitable lien he received during divorce proceedings. Because the divorce decree does not provide a deadline or mechanism by which Guerrero could enforce his equitable lien, the superior court did not err by finding that Guerrero was not entitled to force a sale of the subject property. We affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Guerrero started dating Maria Cascarano in 2008. In June 2010, Guerrero purchased a house in Arizona using his 401k savings and titled it solely in Cascarano's name. The house sat vacant for a year and a half. Then, in December 2012, Guerrero and Cascarano married. The same day they were married, the couple moved into the previously vacant house together. Cascarano petitioned for dissolution of marriage a little more than two years later.

¶3 After a trial in July 2015, the superior court determined that the house was Cascarano's sole and separate property because it was acquired by gift. But because Guerrero's income during the marriage was used to make all property improvements, pay property taxes, and maintain the property, the community had an interest in the amount of \$69,500. As a result, the superior court granted Guerrero an equitable lien of \$34,750 against the house for his half of the community's interest. The decree included the following language:

**IT IS ORDERED** granting Husband an equitable lien against the real property . . . in the amount of \$34,750.00.

The decree did not specify how or when Guerrero could enforce his equitable lien.

¶4 In January 2016, Guerrero filed a petition to enforce the court's order and requested that the court garnish Cascarano's wages until

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his lien was satisfied. Cascarano filed a motion to dismiss Guerrero's petition, which the court granted when Guerrero failed to appear at a scheduled hearing.

¶5 In March 2019, Guerrero again petitioned the court – this time through counsel – to make Cascarano refinance or sell the house so he could collect his equitable lien. Guerrero argued that the court should have made a provision for him to enforce his equitable lien. In dismissing Guerrero's petition, the superior court found the decree did not include a deadline compelling Cascarano to sell or refinance the property, and therefore, the court could not create or enforce a provision to that end.

¶6 Guerrero timely appealed. We have jurisdiction under A.R.S. § 12-2101(A)(2).

**DISCUSSION**

¶7 Guerrero argues that the superior court erred when it dismissed his petition to enforce his equitable lien. Specifically, Guerrero challenges the court's finding that, because the final underlying decree did not contain a provision mandating sale or refinance, Guerrero could not immediately enforce his equitable lien. "The interpretation of an existing decree or court order presents a question of law reviewed de novo." *Quijada v. Quijada*, 246 Ariz. 217, 219, ¶ 5 (App. 2019).

¶8 A decree of dissolution is final when it is entered. A.R.S. § 25-325(A); *In re Marriage of Gaddis*, 191 Ariz. 467, 469 (App. 1997). Although the superior court may "make new orders, consistent with the parties' property interests," if existing orders "will no longer achieve full and complete justice between the parties," property distributions are generally final unless special circumstances exist to justify reopening. *Jensen v. Beirne*, 241 Ariz. 225, 229 (App. 2016); A.R.S. § 25-327(A). Moreover, a dissolution decree is construed following the general rules of construction of a written instrument. *See Lopez v. Lopez*, 125 Ariz. 309, 310 (App. 1980). Where terms are unambiguous and clear, "it is not within the province or power of the court to alter, revise, modify, extend, rewrite or remake an agreement." *Shattuck v. Precision-Toyota, Inc.*, 115 Ariz. 586, 588 (1977) (citation omitted).

¶9 The superior court found that the decree "is a final judgment" and has "determined the rights of the parties." The parties do not dispute that Guerrero has an equitable lien against the property. Likewise, it is undisputed that the decree entered in 2015 did not provide a deadline by which Cascarano had to sell or refinance her house. Therefore, applying general rules of construction of a written instrument, no ambiguity is

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presented, and the court cannot, therefore, alter, modify, or rewrite the decree. Because the decree does not provide a time frame or a mechanism for enforcing the equitable lien, the superior court did not err by finding that Guerrero was not entitled to the relief he requested.

¶10 To the extent that Guerrero challenges the 2015 decree itself, that challenge is untimely. *See* ARCAP 9(a) (a notice of appeal must be filed no later than 30 days after the judgment being appealed). Moreover, to the extent that Guerrero asked the superior court *directly* to invalidate the 2015 ruling, the superior court cannot do so once the judgment has become final, absent special circumstances. *Davis v. Davis*, 195 Ariz. 158, 161, ¶ 11 (App. 1999) (“[A] superior court judge has no jurisdiction to review or change the judgment of another superior court judge when the judgment has become ‘final.’”); *see also* Ariz. R. Fam. Law P. 85 (explaining special circumstances to justify reopening a judgment).

¶11 Guerrero argues that the superior court’s duty to achieve justice between the parties gives it the power to compel Cascarano to sell or refinance her house. But Guerrero has not made an argument that circumstances exist to justify reopening the judgment, *see* Ariz. R. Fam. Law P. 85, and Cascarano acknowledges that the decree does not preclude Guerrero from pursuing a foreclosure action. *See* A.R.S. § 33-725. We express no opinion on the merits of those arguments.

CONCLUSION

¶12 We affirm the superior court’s order that denied Guerrero’s petition because there is no requirement that Cascarano sell or refinance the house. In an exercise of our discretion, we decline to award attorney’s fees. Cascarano, however, is awarded her taxable costs on appeal contingent upon her compliance with ARCAP 21.



AMY M. WOOD • Clerk of the Court  
FILED: AA